other circumstances in determining whether a position was an employment or an office. *State Tax Commission* v. *Harrington, supra; Reising* v. *Portland,* 57 Ore. 295; *Bankers Surety Co.* v. *Newport,* 162 Ky. 473. In the same way the duty to take an oath has been considered in some late cases, *Blynn* v. *Pontiac, supra;* but the fact that an employee does take an oath will not make him an officer. *Scully* v. *U. S., supra; Jones* v. *Battle Creek,* 193 Mich. 1. It might perhaps be urged that the city manager in the principal case was not an officer, from the foregoing case, since he could be removed at any time by the commission. However duration of term was held not essential in *Blynn* v. *Pontiac, supra,* although it has been considered with other circumstances in holding a position an employment and not an office. *Cross* v. *Fisher,* 132 Tenn. 31; *Bilger* v. *State,* 63 Wash. 457; *Jones* v. *Botkin,* 92 Kan. 242; *People* v. *Ry. Co.,* 267 Ill. 142. However the main difficulty is in failing to distinguish between a duration of an office, as such, and the duration of the term of the incumbent. The former seems to be necessary and the latter not.

RESTRAINT OF TRADE—SHERMAN ACT—CONTRACTS AFFECTING THE RESALE PRICE.—Defendant was a manufacturer of pneumatic tire valves, gauges, etc. It required all dealers purchasing from it to contract in writing not to resell below stated prices. On this account it was indicted for engaging in a combination rendered criminal by the Sherman Act. The District Court sustained a demurrer. *Held,* demurrer should have been overruled. *United States* v. *A. Schrader's Sons, Inc.,* — Sup. Ct. Rep. —.

The court distinguishes this case from *United States* v. *Colgate & Co.,* 250 U. S. 300, on the ground that the Colgate Company was not charged with making contracts restricting the resale price, but only with refusing to sell to dealers who would not adhere to the resale prices fixed by the company. A *dictum* in *Eastern States, etc. Ass'n.* v. *United States,* 234 U. S. 600, accords with the decision of the *Colgate case.* The decision of the principal case is consistent with the Supreme Court's holding in civil suits, that systematic attempts to control resale or use of a chattel by its owner are invalid, even though the chattel is made according to a secret process. *Dr. Miles Medical Co.* v. *John D. Park & Son,* 230 U. S. 303, or embodies an invention protected by patent, *Boston Store* v. *American Gramophone Co.,* 246 U. S. 8; *Straus* v. *Victor Talking Machine Co.,* 243 U. S. 490. For a discussion of these subjects and other cases see 15 MICH. L. REV. 581; 16 MICH. L. REV. 127-129. That it is not an infraction of the Sherman Act for a patentee systematically and by written contracts to restrict the acts of a *lessee* of chattels, although such restrictions affect interstate commerce, see, *United States* v. *United Shoe Machinery Co.,* 247 U. S. 32; *United States* v. *Winslow,* 227 U. S. 202.

SALES—TRADING WITH THE ENEMY—EFFECT OF WAR UPON CONTRACT FOR SALE OF GERMAN WAR BONDS.—Prior to our entrance into the war with Germany, plaintiff and defendant, both "citizens, or, at least, residents of the United States," entered into a contract for the purchase and sale of 10,000

marks of German War Bonds to be delivered to the plaintiff upon arrival from Germany,—defendant having already contracted for the purchase of sufficient bonds from a German bank, to cover the plaintiff's purchase. Although the bonds were not yet issued by the German government, plaintiff paid the full purchase price for the same. War intervened, and the bonds never arrived up to the time of this action; some two years later, the plaintiff sues to recover the purchase price, claiming to have rescinded the sale. *Held,* a valid executed contract of sale, and title having passed, the plaintiff cannot recover,—and even though the contract be executory, the plaintiff must fail. *Erdreich* v. *Zimmerman et al.,* (1920) 179 N. Y. S. 289.

The result reached is correct, provided the court is justified in its fundamental assumption that title had passed, and the contract was executed. But it is apparent that the court was not warranted in making this assumption, because title could not possibly have passed, there being no bonds in existence at the time of the contract, to which such title could attach,—and title could not attach to bonds, to be issued thereafter. *Deutsch* v. *Dunham,* 72 Ark. 141; *Bates* v. *Smith,* 83 Mich. 347; *Andrew* v. *Newcomb,* 32 N. Y. 417; *Maskelinski* v. *Wazsinenski,* 20 N. Y. S. 533. Assuming this to be an executory contract of sale, it seems that the plaintiff should be allowed to recover his purchase money, on the ground that the declaration of war by the United States rendered it void and illegal. It has frequently been held that any exportation to, or importation from, an enemy port is a prima facie trading with the enemy, and therefore executory contracts involving the same are dissolved by a declaration of war. *M'Grath* v. *Isaacs,* 1 Nott & M'C. (S. C.) 563; 2 M'C. L. (S.C.) 26; *Brown* v. *Delano,* 12 Mass. 37. The English cases support this doctrine also, but draw a distinction between these cases and cases where some embargo, or mere temporary restraint is imposed by the government. In the latter cases, they hold that a mere suspension, and not a dissolution, of the contracts results,—on the theory that such restraints are only temporary, whereas no person can forsee the termination of a state of hostilities, for its duration depends, not upon the will of any one government, "but on a number of considerations all of which are as uncertain as any such considerations can be." *Andrew Millar and Company* v. *Taylor and Company,* [1916] 1 K. B. 402; *Reid* v. *Hoskins,* (1855) 4 E. & B. 979; *Avery* v. *Bowden,* (1855) 5 E. & B. 714; *Esposito* v. *Bowden,* (1855) 4 E. & B. 964. These cases hold that carrying of goods to or from an enemy port, even in a neutral vessel, involves prima facie a trading with the enemy. Thus it appears that the contract in the instant case should be considered as dissolved because these goods, the bonds which were the subject of the executory contract, were to be imported from an enemy port, and therefore a trading with the enemy was involved. As to intervening impossibility of performance of contracts, as a defense, see L. R. A. 1916-F. 71.

STATUE OF LIMITATIONS—COUNTERCLAIM GOOD FOR DEFENSIVE PURPOSES THOUGH BARRED BY STATUTE OF LIMITATIONS.—Plaintiff sued on a promissory note for three hundred dollars. Defendant filed a counter-claim, *ex delicto,*